



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0034]

RIN 1625-AA00

Safety Zone, Texas City Channel; Texas City, TX

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule.

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SUMMARY: By this direct final rule, the Coast Guard is removing the regulation for the safety zone at Snake Island, also known as Shoal Point, within the Texas City Channel. The Coast Guard is removing the regulation because it places general restrictions on vessels which are no longer necessary.

DATES: This rule is effective on [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the Coast Guard receives a written adverse comment or written notice of intent to submit a written adverse comment, the Coast Guard will publish a timely withdrawal of this Direct Final Rule.

ADDRESSES: You may submit comments identified by docket number

using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

Mail or Delivery: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Deliveries accepted between 9 a.m. and 5 p.m., Monday through

Friday, except federal holidays. The telephone number is 202-

366-9329. See the "Public Participation and Request for

Comments" portion of the SUPPLEMENTARY INFORMATION section below

for further instructions on submitting comments. To avoid

duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this

rule, call or e-mail LTJG William Stewart, Marine Safety Unit

Texas City, U.S. Coast Guard; telephone (409)-978-2730, e-mail

[William.a.stewart@uscg.mil](mailto:William.a.stewart@uscg.mil). If you have questions on viewing or

submitting material to the docket, call Cheryl F. Collins,

Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulation
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
VTS	Vessel Traffic Service

## A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0034] in the "SEARCH" box and click "SEARCH." Click on "Submit a

Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0034) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

The Coast Guard proposed to establish a safety zone at Snake Island on July 31, 1981 to assist in managing port congestions. The safety zone became a final rule on July 8, 1982 [47 FR 13802]. On June 29, 2000, the safety zone was amended to reflect a name change from Captain of the Port, Galveston to Captain of the Port, Houston-Galveston. The safety zone is currently codified as amended at 33 CFR 165.804.

We are publishing this direct final rule under 33 CFR 1.05-55 because this rule removes a regulatory burden found no longer necessary and no adverse comments are expected. If no adverse comment or notice of intent to submit an adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule, removing an existing safety zone

regulation, will become effective as stated in the DATES section. In that case, approximately 30 days before the effective date, we will publish a document in the Federal Register stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the Federal Register announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

### C. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191,

195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The purpose of this direct final rule is to remove the regulation found in 33 CFR 165.804 that established a safety zone restriction in the Texas City Channel. The Coast Guard finds that the present regulation imposes a continuous prohibition from mooring and fleeting on Snake Island that is no longer necessary.

#### D. Discussion of the Final Rule

On June 3, 2013, the Port of Texas City requested the Captain of the Port Houston-Galveston remove the safety zone currently enforced on the west and northwest shores of Snake Island. The Port of Texas City petitioned for the safety zone removal for "the safety of the users of the Texas City Harbor and to assist in managing the vessel traffic in the Port of Texas City". With the significant increase in vessel size and traffic during the past thirty years, the Texas City Harbor is not wide enough to accommodate barge traffic passing while ships are docking or sailing. Thus, under the current regulation found under 33 CFR 165.804, barge traffic is subject to queuing in the Texas City Channel for multiple hours, often navigating amongst other vessel traffic and adverse weather conditions. By removing the safety zone on Snake Island, barge traffic will be afforded

the opportunity to moor along the shoreline, lessening harbor congestion and reducing the risk for marine casualties.

A regulation that imposes a continuous prohibition from mooring and fleeting on Snake Island is no longer necessary for the following reasons: 1) the Coast Guard established a Vessel Traffic Service (VTS) in 1994 [Federal Register Volume 59, Number 135 (Friday, July 15, 1994)] which adequately manages vessel movements; 2) the Port of Texas City has established a Harbormaster, who further facilitates traffic movements and berthing arrangements; and 3) the Coast Guard implemented a permanent security zone in Texas City, Texas established under 33 CFR 165.814 which encompasses the west and northwest approaches to Snake Island. This security zone restricts certain vessels from entering specified areas and facilities within the port, which effectively helps to manage traffic. Over time, by establishing a Harbormaster, VTS, and certain other regulations the subject safety zone under 33 CFR 165.804, has become unnecessary for its original purpose to manage congestion.

The Port of Texas City's request to remove this safety zone has received broad support and has been endorsed by the Galveston-Texas City Pilot's Association, Lone Star Harbor Safety Committee, and Sector Houston-Galveston Vessel Traffic Service. Additionally, the owner of Snake Island, the City of Texas City has no objections to this proposal.



## E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Because this rule is removing all safety zone restrictions under 33 CFR 165.804, it is not a significant regulatory action. No new restrictions or actions are being imposed by this rule.

### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule removes all restrictions imposed by the safety zone regulation under 33 CFR 165.804. Therefore, the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental checklist and categorical exclusion determination are not required under 34(g), for regulations disestablishing a safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.804 [REMOVED]

2. Remove § 165.804.

Dated: February 21, 2014.

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Brian K. Penoyer,  
Captain, U.S. Coast Guard,  
Captain of the Port Houston-Galveston.

[FR Doc. 2014-07839 Filed 04/07/2014 at 8:45 am; Publication Date: 04/08/2014]